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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court

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8 Rodriguez

9 **SUPERIOR COURT FOR THE STATE CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**
11

12 ANDREW SHIN, HECTOR RODRIGUEZ,
13 individually and on behalf of others similarly
situated, and on behalf of the general public,

14 Plaintiffs,

15 vs.

16 GEN CERRITOS, LLC dba GEN KOREAN
17 HOUSE BBQ, a Delaware Limited Liability
Company; STEVE OH, an individual; DAVID
18 WOOK JIN KIM, an individual, and DOES 1
through 25, inclusive,

19 Defendants.
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CLASS ACTION

Case No. **21STCV06627**

**COMPLAINT FOR DAMAGES,
PENALTIES, PREJUDGMENT
INTEREST, ATTORNEYS' FEES AND
COSTS**

1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7 & 512 AND IWC WAGE ORDER NO. 5-2001
2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §§ 226.7 AND WAGE ORDER NO. 5-2001
3. FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF LABOR CODE §§ 1194, 1197, AND WAGE ORDER NO. 5-2001
4. FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226 AND WAGE ORDER NO. 5-2001
5. FAILURE TO PAY WAGES UPON DISCHARGE IN VIOLATION OF LABOR CODE §§ 201, 202 & 203
6. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200 ET

SEQ.
7. PAGA CLAIM FOR CIVIL
PENALTIES PUSUANT TO LABOR
CODE §§ 2698 ET SEQ.

DEMAND FOR JURY TRIAL

Plaintiffs, Andrew Shin and Hector Rodriguez (collectively “Plaintiffs”), on behalf of themselves and all other persons similarly situated, and on behalf of the general public, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiffs bring class claims on behalf of themselves and all non-exempt employees employed by Defendant Gen Cerritos, LLC (“Gen Cerritos”) dba Gen Korean BBQ House, Steve Oh, and David Wook Jin Kim (collectively, “Defendants”), as Bussers, Server Assistants, or Servers (“members of the putative class”) in California from February 16, 2017 through the trial of this action. This action alleges Gen Cerritos’s violations of various provisions of the California Labor Code, including failure to provide adequate meal periods, failure to provide adequate rest periods, failure to pay all wages earned at the conclusion of employment, failure to furnish timely statements accurately showing the total wages earned and hours worked during each pay period, and failing to pay all wages earned twice per month. Plaintiffs and members of the putative class were required to work through their meal periods; however, the nature of their work did not prevent Defendants from relieving Plaintiffs and members of the putative class of all duties. Moreover, Plaintiffs and an unknown number of members of the putative class did not enter into a written agreement with Defendants agreeing to an on-the-job meal period. In addition, Defendants did not authorize Plaintiffs or members of the putative class to take rest periods in accordance with Wage Order No. 5-2001. At no time did Defendants compensate Plaintiffs or members of the putative class for the aforementioned violations of California law. Plaintiffs also allege that these acts, which violate the California Labor Code, constitute unlawful and unfair business practices in violation of the California Unfair Competition Laws. Plaintiffs also claim civil penalties for the above acts, which violate the California Labor Code, under California Labor Code §§ 2698 *et seq.*

1 (the Private Attorneys General Act (“PAGA”)).

2 2. In this action, Plaintiffs, on behalf of themselves and all members of the putative
3 class, seek wages for missed meal and rest periods, statutory penalties, civil penalties, restitution,
4 declaratory and injunctive relief, attorneys’ fees and costs, prejudgment interest, and other relief
5 under California Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001, 8 Cal. Code of
6 Reg. § 11050 (“Wage Order No. 5-2001”), California Labor Code (“Labor Code”) §§ 201, 202,
7 203, 204(a), 226, 226.7, 512, 2699.5, California Code of Civil Procedure § 1021.5, California
8 Business and Professions Code §§ 17200 *et seq.* (“UCL”) and California common law.

9 3. The “Class Period” is designated as the time from February 16, 2017 through the
10 trial in this action based upon the allegation that the violations of California’s wage and hour laws
11 and Unfair Competition Law, as described more fully below, occurred during that time period.

12 4. During the Class Period, Defendants has had a consistent policy and/or practice of:
13 (1) failing to provide members of the putative class with legally required meal and rest periods; (2)
14 willfully failing to pay compensation owed (including meal and rest period compensation) in a
15 prompt and timely manner to members of the putative class whose employment with Gen Cerritos
16 had concluded; and (3) knowingly and intentionally failing to furnish timely itemized statements
17 accurately showing, inter alia, the total wages earned and hours worked during each pay period.

18 5. During the Class Period, Defendants failed to provide Plaintiffs or members of the
19 putative class with an uninterrupted thirty (30) minute off duty meal break for each five (5) hours
20 worked per day as required by Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001.

21 6. During the Class Period, Defendants failed to provide Plaintiffs or members of the
22 putative class with ten (10) minute rest periods for each four (4) hours or major fraction thereof
23 worked per day as required by Labor Code § 226.7 and Wage Order No. 5-2001.

24 7. Defendants have willfully failed and refused to timely pay wages to former
25 Bussers, Server Assistants, and Servers at the conclusion of their employment, entitling these
26 employees to statutory penalties under Labor Code §§ 201, 202 and 203.

27 8. During the Class Period, Defendants knowingly and intentionally have not
28 furnished each of its Bussers, Server Assistants, and Servers with timely itemized wage statements

1 accurately showing, inter alia, total wages earned, and total hours worked, as required by Labor
2 Code § 226. Each Busser, Server Assistant, and Server is owed fifty dollars (\$50) for the initial
3 pay period in which Defendants failed to provide a code-compliant statement and one hundred
4 dollars (\$100) for each subsequent pay period, up to a total of four thousand dollars (\$4,000).

5 9. Accordingly, Defendants have violated the UCL based upon the predicate offenses
6 described above. In addition, the aforementioned violations of the Labor Code entitle Plaintiffs
7 and the members of the putative class to civil penalties under Labor Code §§ 2698 *et seq.*
8 (PAGA).

9 **II. PARTIES**

10 10. Plaintiff Andrew Shin (“Shin”) is an adult resident of the County of Los Angeles,
11 California. Shin was initially employed as a Busser and then promoted to a Server by Gen
12 Cerritos. He was employed between approximately February 24, 2017 and June 17, 2020. While
13 employed as a Server, Shin worked in Los Angeles County at the Gen Cerritos’s Gen Korean
14 BBQ House and was responsible for greeting, taking orders from, and serving food to customers.
15 Shin had no choice but to resigned from his position with Gen Cerritos as a result of intolerable
16 working conditions.

17 11. Plaintiff Hector Rodriguez (“Rodriguez”) current resides in County of Orange,
18 California. Rodriguez was initially employed as a Runner and then promoted to Server by Gen
19 Cerritos. He was employed between approximately September 24, 2016 and June 9, 2020. While
20 employed as a Server, Rodriguez worked in Los Angeles County at Gen Cerritos’s Gen Korean
21 BBQ House was responsible for greeting, taking orders from, and serving food to customers.
22 Rodriguez was wrongfully terminated by Gen Cerritos on June 9, 2020 after complaining about
23 Gen Cerritos violating California law in relation to COVID-19 restrictions.

24 12. At all times relevant herein, Gen Cerritos is a Delaware limited liability company
25 registered to do business as Gen Korean House BBQ, an all-you-can-eat Korean BBQ restaurant
26 locations throughout California. Gen Cerritos operating corporate headquarters are located in
27 Cerritos, California.

28 13. During the Class Period, Defendant Oh was Gen Cerritos’s General Manager.

1 Plaintiffs are informed and believe, and based thereon allege, that at all relevant times mentioned
2 herein, Defendant Oh worked as a supervising and managing agent for Gen Cerritos. Plaintiffs are
3 informed and believe, and based thereon allege, that Defendant Oh is a resident of Los Angeles
4 County, State of California. Defendant Oh is responsible for developing, authorizing, and
5 enforcing personnel and payroll policies that are subject of this lawsuit. By establishing policies
6 and procedures for meal and rest periods and payroll policies at Gen Cerritos, knowingly and
7 intentionally interfered with Plaintiffs or the members of the putative class receiving and/or taking
8 their meal and rest periods as required under California law.

9 14. During the Class Period, Defendant Jin Kim was Gen Cerritos's CEO and is a
10 managing agent of Gen Cerritos. Plaintiffs are informed and believe that Defendant Jin Kim is a
11 resident of Los Angeles County, State of California. Defendant Jin Kim is responsible for
12 developing, authorizing, and enforcing personnel and payroll policies that are subject of this
13 lawsuit. By establishing policies and procedures for meal and rest periods and payroll policies at
14 Gen Cerritos, knowingly and intentionally interfered with Plaintiffs or the members of the putative
15 class receiving and/or taking their meal and rest periods as required under California law.

16 15. The true names and capacities, whether individual, corporate, associate, or
17 otherwise of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to
18 Plaintiffs, who therefore sue Defendants by fictitious names under Code of Civil Procedure
19 section 474. Plaintiffs will file and serve one or more amendments to this Complaint upon
20 learning the true names and capacities of said Defendants.

21 16. Upon information and belief, Plaintiffs allege that each of the fictitiously named
22 Defendants is responsible in some manner for and proximately cause the injuries and damages
23 sustained by Plaintiffs and members of the putative class as alleged in this Complaint.

24 17. Upon information and belief, Plaintiffs allege that each of the Defendants named
25 herein acted as the employee, agent, servant, partner, alter-ego and/or joint venture of one or more
26 of the other Defendants named herein. In doing the acts and/or omissions alleged herein, each of
27 said Defendants acted within the course and scope of his or her relationship with any other
28 Defendants and gave and received full consent, permission and ratification to the acts and/or

omissions alleged herein.

III. JURISDICTION & VENUE

18. Venue is proper in this Judicial district and the County of Los Angeles because the Defendants maintain some of their locations and transact business in this county, the obligations and liability arise in this county, and work was performed by Plaintiffs, and members of the putative class who are the subject of this action, in the County of Los Angeles, California.

19. The California Superior Court has jurisdiction in the matter because upon information and belief, Plaintiffs and Defendants are residents of and/or are domiciled in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code.

IV. FACTUAL BACKGROUND

20. Defendants operated and continues to operate, and at all times during the Class Period conducted business, as Gen Korean House BBQ restaurants in California.

21. Plaintiffs are informed and believe, and based thereon, alleges that Gen Cerritos employed over one hundred (100) non-exempt hourly Bussers, Server Assistants, and Servers during the Class Period.

22. Generally speaking, Defendants' Bussers, Server Assistants, and Servers' duties include serving food and drinks to customers, charging for the food and drinks provided, clearing the tables, setting the table for new customers, and cleaning the tables.

23. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent one class of employees composed of and defined as follows:

All persons employed by Defendants as Bussers, Server Assistants, or Servers, or employed in positions with similar job duties as Bussers, Server Assistants, or Servers, in California at any time from February 16, 2017 through the date of trial in this action.

24. Defendants have not provided Plaintiffs or members of the putative class with a 30-

1 minute, duty-free meal period for every five (5) hours of work. Members of the putative class
2 routinely did not eat during a shift or ate while performing their job duties. Indeed, members of the
3 putative class were routinely forced to take their meal periods at the end of their shifts after they
4 clocked out.

5 25. Defendants also have not provided members of the putative class with a ten (10)
6 minute rest period for every four (4) hours of work or major fraction thereof.

7 26. Throughout the Class Period, Defendants had a policy of not providing members of
8 the putative class with meal and rest periods as required by California law.

9 27. Gen Cerritos could have and can provide Bussers, Server Assistants, and Servers
10 with uninterrupted, off-duty meal and rest periods; however, it has refused and continues to refuse
11 to do so. For example, Defendants could have done the following: (1) scheduled sufficient
12 Bussers, Server Assistants, and Servers on a shift to provide breaks to Plaintiffs and all members
13 of the putative class; (2) cross-trained other Defendants' employees so that they could "break" the
14 Bussers, Server Assistants, and Servers; and (3) Defendants' exempt employees could have
15 performed the Bussers, Server Assistants, and Servers' duties while they were on break.

16 28. Members of the putative class have not and do not fall within any exemption to the
17 meal period requirements of the Labor Code and Wage Order No. 5-2001.

18 29. During the Class Period, Defendants has failed to furnish Plaintiffs and members of
19 the putative class with timely, itemized wage statements accurately showing the total hours
20 worked and wages earned as required by Labor Code § 226.

21 30. During the Class Period, Gen Cerritos has failed to pay all compensation due and
22 owing to former employees who worked as bussers, server assistants, and serves, as required by
23 Labor Code §§ 201 and 202.

24 31. During the Class Period, Gen Cerritos violated the UCL by engaging in violations
25 of the California wage and hour laws described above.

26 32. During the Class Period, Defendants violated Labor Code §§ 201, 202, 203, 204(a),
27 226, 226.7 and 512 as described above, thereby entitling Plaintiffs or members of the putative
28 class to penalties afforded under PAGA.

1 V. CLASS ACTION ALLEGATIONS

2 33. This action is maintainable as a class action pursuant to Code of Civil Procedure §
3 382 as to claims for meal period violations, rest period violations, failure to provide accurate wage
4 statements, waiting time penalties, attorneys' fees and costs under the Labor Code, Code of Civil
5 Procedure and Business & Professions Code. Plaintiffs are representative of other Bussers, Server
6 Assistants, and Servers and are acting on behalf of their interests. The similarly situated
7 employees are known to Gen Cerritos and are readily identifiable and locatable through Gen
8 Cerritos' own employment records. The Class that Plaintiffs seek to represent is defined as
9 follows:

10 All persons employed by Defendants as Bussers, Server Assistants, or
11 Servers, or employed in positions with similar job duties as Bussers,
12 Server Assistants, or Servers, in California at any time from February 16,
13 2017 through the date of trial in this action. During the Class Period,
14 members of the putative class worked as Bussers, Server Assistants, and
15 Servers and were not provided meal periods and rest periods in
16 compliance with Labor Code §§ 226.7, 512, and Wage Order No. 5-2001
17 and/or in violation of the UCL; were not timely paid their accrued
18 compensation on a bi-monthly basis in compliance with Labor Code §
19 204(a) and/or in violation of the UCL; were not timely paid their total
20 accrued compensation at the time their employment concluded with
21 Defendants in compliance with Labor Code §§ 201, 202 and 203 and/or in
22 violation of the UCL; and were not provided with accurate wage
23 statements itemizing the total hours worked and wages earned in violation
24 of Labor Code § 226 and/or in violation of the UCL.

25 Numerosity of Class

26 34. The potential members of the class as defined are so numerous that joinder of all
27 members of the putative class is impracticable. Although the precise number of such employees is
28 unknown, Plaintiffs believe that over one hundred (100) Bussers, Server Assistants, and Servers

1 employed by Defendants would fall within the putative class. The exact number is easily
2 ascertainable from Defendants' own employment records, which are presently within the control
3 of Defendants.

4 **Existence and Predominance of Common Questions of Fact and Law**

5 35. There are questions of law and fact common to the class that predominate over any
6 questions affecting only individual members of the class, including without limitation, whether, as
7 alleged herein, Gen Cerritos:

- 8 a. Violated Labor Code §§ 226.7, 512 and Wage Order 5-2001 by failing to provide
9 Bussers, Server Assistants, and Servers with required off-duty meal periods and
10 rest periods;
- 11 b. Knowingly and intentionally failed to provide Bussers, Server Assistants, and
12 Servers with an accurate itemized wage statement showing total hours worked and
13 total wages earned, as required by Labor Code § 226;
- 14 c. Violated Labor Code §§ 201, 202 and 203 by failing to timely pay Bussers, Server
15 Assistants, and Servers wages due at the conclusion of employment with Gen
16 Cerritos;
- 17 d. Failed to timely pay Bussers, Server Assistants, and Servers their accrued
18 compensation on a bi-monthly basis in violation of Labor Code § 204(a); and
- 19 e. Violated the UCL by (1) failing to provide Bussers, Server Assistants, and Servers
20 with required off-duty meal periods and rest periods in violation of Labor Code §§
21 226.7, 512 and Wage Order 5-2001; (2) knowingly and intentionally failed to
22 provide Bussers, Server Assistants, and Servers with an accurate itemized wage
23 statement showing total hours worked and total wages earned, as required by Labor
24 Code § 226; (3) failing to timely pay Bussers, Server Assistants, and Servers wages
25 due at the conclusion of employment with Gen Cerritos in violation of Labor Code
26 §§ 201, 202 and 203; and (4) failing to timely pay Bussers, Server Assistants, and
27 Servers their accrued compensation on a bi-monthly basis in violation of Labor
28 Code § 204(a).

1 **Typicality**

2 36. The claims of the Plaintiffs are typical of the claims of the class they seek to
3 represent. Plaintiffs and members of the putative class work or have worked for Defendants as
4 Bussers, Server Assistants, and Servers or in other positions with the same job duties. Plaintiffs
5 and members of the putative class have the same rights based upon California wage and hour laws.
6 Plaintiffs and members of the putative class were subjected to the same violations of their rights
7 under California law by Defendants and have suffered damages, including unpaid premium pay
8 for meal and rest period violations, resulting from Defendants' wrongful conduct. In addition,
9 Plaintiffs and members of the putative class are entitled to equitable relief, as permitted by law,
10 because Defendants' violations of state statutes have harmed members of the putative class and
11 constitute an unfair business practice, especially when compared to those competitors who comply
12 with wage and hour laws.

13 **Adequacy of Representation**

14 37. As Class Representative, Plaintiffs will fairly and adequately represent and protect
15 the interests of the members of the putative class. Plaintiffs' interests are not in conflict with those
16 of the members of the putative class. Plaintiffs' counsel is competent and experienced in litigating
17 large employment class actions and other complex litigation matters, including wage and hour
18 cases like this.

19 **Superiority of Class Action**

20 38. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Each members of the putative class has been damaged and is
22 entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to provide
23 Bussers, Server Assistants, and Servers with required off-duty meal periods and rest periods,
24 knowingly and intentionally failing to provide Bussers, Server Assistants, and Servers with an
25 accurate itemized wage statement showing total hours worked and total wages earned, failing to
26 timely pay Bussers, Server Assistants, and Servers wages due at the conclusion of employment
27 with Gen Cerritos and failing to timely pay Bussers, Server Assistants, and Servers their accrued
28 compensation on a bi-monthly basis in violation of Labor Code § 204(a). The damages suffered by

1 individual members of the putative class are small compared to the expense and burden of
2 individual prosecution of this litigation. Individual plaintiffs may lack financial resources to
3 vigorously prosecute a lawsuit against Defendants to recover such damages. In addition, class
4 litigation is superior because it will obviate the need for unduly duplicative litigation that might
5 result in inconsistent judgments about Defendants' practices.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7**
8 **& 512 AND WAGE ORDER NO. 5-2001**

9 **(Against all Defendants and DOES 1 through 20)**

10 39. Plaintiffs reallege and incorporate by reference each and every paragraph as though
11 restated in their entirety herein.

12 40. During the Class Period, Gen Cerritos had a policy and/or practice of not
13 permitting or authorizing Bussers, Server Assistants, and Servers to take a thirty (30) minute
14 uninterrupted meal period. Plaintiffs or members of the putative class regularly worked in excess
15 of five (5) and ten (10) hours a day without being provided at least a half-hour meal period in
16 which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order
17 No. 5-2001.

18 41. Defendants' policy and practice described above renders Defendants liable to
19 Plaintiffs or members of the putative class for one hour of additional pay at the regular rate of
20 compensation for each workday that the proper meal period was not permitted or authorized,
21 pursuant to Labor Code § 226.7, as well as interest on that amount pursuant to Labor Code §
22 218.6, plus reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

23 42. Defendant Oh (a "managing agent") and Defendant Jin Kim (a "managing agent")
24 are liable for the minimum wage violations. Under California Labor Code section 558.1, "an
25 owner, director, officer, or managing agent" who "violates, or causes to be violated" section 226.7
26 of the Labor Code "may be held liable as the employer for such violation." Both Defendant Oh
27 and Defendant Jin Kim caused the aforementioned violations of the Labor Code.

28 ///

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §§ 226.7
AND WAGE ORDER NO. 5-2001**

(Against all Defendants and DOES 1 through 20)

43. Plaintiffs reallege and incorporate by reference each and every paragraph as though restated in their entirety herein.

44. During the Class Period, Defendants had a policy and/or practice of not permitting or authorizing Bussers, Server Assistants, and Servers to take a ten (10) minute rest period for every four (4) hours of work or major fraction thereof as required by Labor Code §§ 226.7 and Wage Order No. 5-2001. Plaintiffs and members of the putative class regularly worked in excess of three and one-half (3 ½) hours, six (6) hours and at times ten (10) hours a day without being provided a ten (10) minute rest period.

45. Defendants' policy and practice described above renders Defendants liable to Plaintiffs and the members of the putative class for one hour of additional pay at the regular rate of compensation for each workday that the proper rest period was not permitted or authorized, pursuant to Labor Code § 226.7, as well as interest on that amount pursuant to Labor Code § 218.6, plus reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

46. Defendant Oh (a "managing agent") and Defendant Jin Kim (a "managing agent") are liable for the minimum wage violations. Under California Labor Code section 558.1, "an owner, director, officer, or managing agent" who "violates, or causes to be violated" section 226.7 of the Labor Code "may be held liable as the employer for such violation." Both Defendant Oh and Defendant Jin Kim caused the aforementioned violations of the Labor Code.

THIRD CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1194,
1197, AND WAGE ORDER NO. 5-2001**

(Against Defendant Gen Cerritos and DOES 1 through 20)

47. Plaintiffs reallege and incorporate by reference each and every paragraph as though restated in their entirety herein.

1 48. Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer
2 to suffer or permit a California employee to work without paying wages at the proper minimum
3 wage for all time worked as required by the applicable Wage Order no. 5-2001.

4 49. Pursuant to Wage Order no. 5-2001, subdivision 2(k), at all times material hereto,
5 “hours worked” included “the time during which an employee is subject to the control of an
6 employer and includes all the time the employee is suffered or permitted to work, whether or not
7 required to do so.”

8 50. Labor Code § 1197 states, in full: “The minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful.”

11 51. California Labor Code § 1194, subdivision (a), states that “any employee receiving
12 less than the legal minimum wage or the legal overtime compensation applicable to the employee
13 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
14 or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of
15 suit.”

16 52. California Labor Code § 1197.1 provides that: “(a) Any employer or other person
17 acting either individually or as an officer, agent, or employee of another person, who pays or
18 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
19 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
20 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
21 Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred
22 dollars (\$100) for each underpaid employee for each pay period for which the employee is
23 underpaid. ... (2) For each subsequent violation for the same specific offense, two hundred fifty
24 dollars (\$250) for each underpaid employee for each pay period for which the employee is
25 underpaid regardless of whether the initial violation is intentionally committed. This amount shall
26 be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
27 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

28 53. During the Class Period, Defendants failed to pay Plaintiffs or the members of the

1 putative class at least the minimum wage for all hours worked. Plaintiff is informed and believes,
2 and based thereon alleges, that Defendants knew or should have known that Plaintiff and
3 aggrieved employees were entitled to receive at least minimum wages for compensation and that
4 they were not receiving at least minimum wages for work done.

5 54. Defendants' failure to pay Plaintiffs and the members of the putative class the
6 minimum wage as required violates Labor Code sections 1194, 1197, and 1197.1. Pursuant to
7 those sections, Plaintiffs and members of the putative class are entitled to recover the unpaid
8 balance of her minimum wage compensation, as well as interest, costs and attorney's fees.

9 55. Pursuant to Labor Code section 1194.2 and Wage Order No. 5-2001, Plaintiffs and
10 the members of the putative class are entitled to recover liquidated damages in an amount equal to
11 the wages unlawfully unpaid and interest thereon.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS IN**

14 **VIOLATION OF LABOR CODE § 226**

15 **(Against all Defendants and DOES 1 through 20)**

16 56. Plaintiffs reallege and incorporate by reference each and every paragraph as though
17 restated in their entirety herein.

18 57. California Labor Code § 226 requires an employer to provide an accurate itemized
19 statement in writing showing "(1) gross wages earned, (2) total hours worked by the employee,
20 except for any employee whose compensation is solely based on a salary and who is exempt from
21 payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
22 Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
24 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
25 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
26 and only the last four digits of his or her social security number or an employee identification
27 number other than a social security number, (8) the name and address of the legal entity that is the
28 employer..."

58. Labor Code § 226(e) provides that if an employer knowingly and intentionally fails to provide a statement in compliance with Labor Code § 226(a), then the employee is entitled to recover the greater of actual damages of fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

59. Defendants knowingly and intentionally failed to furnish Plaintiffs and members of the putative class with timely accurate and itemized wage statements showing the gross wages earned and total hours worked, as required by Labor Code § 226, and Plaintiffs and the members of the putative class have suffered injury as a result. Accordingly, Plaintiffs and the members of the putative class are entitled to the amounts provided by Labor Code § 226(e), injunctive relief requiring Defendants' compliance with Labor Code § 226, as well as their attorneys' fees and costs pursuant to Labor Code § 226(h) and Code of Civil Procedure § 1021.5.

60. Defendant Oh (a “managing agent”) and Defendant Jin Kim (a “managing agent”) are liable for the minimum wage violations. Under California Labor Code section 558.1, “an owner, director, officer, or managing agent” who “violates, or causes to be violated” section 226.7 of the Labor Code “may be held liable as the employer for such violation.” Both Defendant Oh and Defendant Jin Kim caused the aforementioned violations of the Labor Code.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON DISCHARGE IN VIOLATION OF

LABOR CODE §§ 201, 202 & 203

(Against all Defendants and DOES 1 through 20)

61. Plaintiffs reallege and incorporate by reference each and every paragraph as though restated in their entirety herein.

62. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing immediately at the time of discharge, layoff, or resignation made with at least seventy-two (72) hours' notice, or within seventy-two (72) hours of resignation made without seventy-two (72) hours' notice.

63. As of the date of the filing of this Complaint, Defendants has willfully failed to pay Plaintiffs and former employee members of the putative class all compensation earned. As a result,

1 Plaintiffs and former employee members of the putative class are entitled to recover from Gen
2 Cerritos an additional sum, pursuant to California Labor Code § 203, equal to a day's wages for
3 thirty (30) days, including interest thereon, plus reasonable attorneys' fees and costs of suit.

4 64. Defendant Oh (a "managing agent") and Defendant Jin Kim (a "managing agent")
5 are liable for the minimum wage violations. Under California Labor Code section 558.1, "an
6 owner, director, officer, or managing agent" who "violates, or causes to be violated" section 226.7
7 of the Labor Code "may be held liable as the employer for such violation." Both Defendant Oh
8 and Defendant Jin Kim caused the aforementioned violations of the Labor Code.

9 **SIXTH CAUSE OF ACTION**

10 **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
11 **BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.***

12 **(Against all Gen Cerritos and DOES 1 through 20)**

13 65. Plaintiffs reallege and incorporate by reference each and every paragraph as though
14 restated in their entirety herein.

15 66. Business & Professions Code §§ 17200, *et seq.*, prohibits business from engaging
16 in unlawful, unfair or fraudulent business practices. Gen Cerritos's illegal policy and/or practice of
17 failing to provide Bussers, Server Assistants, and Servers with required off-duty meal periods and
18 rest periods, knowingly and intentionally failing to provide Bussers, Server Assistants, and Servers
19 with an accurate itemized wage statement showing total hours worked and total wages earned,
20 failing to timely pay Bussers, Server Assistants, and Servers wages due at the conclusion of
21 employment with Gen Cerritos and failing to timely pay Bussers, Server Assistants, and Servers
22 their accrued compensation on a bi-monthly basis constitute unlawful acts prohibited by the UCL.

23 67. Plaintiffs and the members of the putative class have suffered injury in fact and lost
24 money or property pursuant to Business & Professions Code § 17204 as a result of these unlawful
25 and/or unfair business practices.

26 68. As a result of these unlawful acts, Gen Cerritos has reaped unfair benefits and
27 illegal profits, at the expense of Plaintiffs and all similarly situated Bussers, Server Assistants, and
28 Servers. Plaintiffs and the members of the putative class are therefore entitled to an order of

1 restitution requiring Gen Cerritos to restore to Plaintiffs and the members of the putative class the
2 money which Gen Cerritos has acquired by means of their unfair business practices, including
3 missed meal and rest period wages and interest, all unlawfully withheld from Bussers, Server
4 Assistants, and Servers who were employed at any time during the Class Period. All such
5 remedies are cumulative of relief available under other laws, pursuant to Business & Professions
6 Code § 17205.

7 **SEVENTH CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT (PAGA) CLAIM FOR CIVIL PENALTIES**

9 **(LABOR CODE §§ 2698 *ET SEQ.*)**

10 **(Against Gen Cerritos and DOES 1 through 20)**

11 69. Plaintiffs reallege and incorporate by reference each and every paragraph as though
12 restated in their entirety herein.

13 70. Plaintiffs and the members of the putative class are aggrieved employees as defined
14 in Labor Code §2699(a). As such, Plaintiffs seek to recover, on behalf of themselves and all other
15 current and former aggrieved employees affected by the Labor Code violations alleged in this
16 Complaint, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

17 71. Plaintiffs seek to recover the PAGA penalties through a representative action as
18 permitted by PAGA. Therefore, class certification of the PAGA claims is not required although
19 Plaintiffs may choose to seek certification of the PAGA claims.

20 72. Gen Cerritos has committed the following violations of the Labor Code against
21 Plaintiffs and other current and former aggrieved employees:

22 a. Gen Cerritos violated Labor Code §§ 201, 202, 203, 204(a), 226, 226.3, 226.7
23 and 512 based upon the conduct described in this Complaint.

24 73. Plaintiffs have fully complied with the procedural requirements specified in Labor
25 Code § 2699.3 as to each of the alleged violations. On December 9, 2020, Plaintiffs provided
26 notice to Gen Cerritos and the California Labor & Workforce Development Agency ("LWDA") of
27 Plaintiffs' claims based on the alleged Labor Code violations, including the facts and theories
28 supporting these claims. The LWDA has provided no notice to Plaintiffs within thirty-three (33)

1 calendar days of the postmark date of that notice regarding its intentions to investigate or not
2 investigate Plaintiffs' claims. Accordingly, Plaintiffs may commence this action pursuant to Labor
3 Code § 2699.

4 74. Plaintiffs and the members of the putative class also seek injunctive relief ordering
5 Gen Cerritos in the form and manner proven at trial, but at least ordering Gen Cerritos to comply
6 with the Labor Code sections that it has violated.

7 75. Enforcement of statutory provisions to protect workers and to ensure proper and
8 prompt payment of wages is a fundamental public interest. Plaintiffs' successful enforcement of
9 important rights affecting the public interest will confer a significant benefit upon the general
10 public. Private enforcement of these rights is necessary, as no public agency has pursued
11 enforcement. Plaintiffs are incurring a financial burden in pursuing this action, and it would be
12 against the interests of justice to require the payment of attorneys' fees and costs from any
13 recovery obtained, pursuant to, inter alia, Labor Code § 2699.

14 76. As a result of the violations alleged, Plaintiffs, as aggrieved employees on behalf of
15 themselves and other aggrieved employees, seek all civil penalties available pursuant to Labor
16 Code § 2699, including all civil penalties, attorneys' fees, expenses and costs of suit.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE, Plaintiffs pray for judgment as follows:**

- 19 1. Certification of Plaintiffs' claims as a class action, pursuant to Code of Civil Procedure
20 § 382, on behalf of the proposed class;
- 21 2. Class notices to all Bussers, Server Assistants, and Servers in California who worked
22 for Gen Cerritos from February 16, 2017 through the trial in this action, pursuant to the
23 statute of limitations on the UCL claims, Business & Professions Code § 17208;
- 24 3. A declaratory judgment that as to Plaintiffs and the members of the putative class,
25 Defendants have violated Labor Code §§ 226.7 and 512 and Wage Order No. 5-2001
26 by failing to permit and authorize off-duty uninterrupted meal periods;
- 27 4. A declaratory judgment that as to Plaintiffs and the members of the putative class,
28 Defendants have violated Labor Code § 226.7 and Wage Order No. 5-2001 by failing

1 to permit and authorize rest periods;

- 2 5. A declaratory judgment that as to Plaintiffs and the members of the putative class,
3 Defendants have violated Labor Code § 1197 and Wage Order No. 5-2001 by failing to
4 pay them at the applicable minimum wage for their hours worked;
- 5 6. A declaratory judgment that as to Plaintiffs and the members of the putative class, Gen
6 Cerritos has knowingly and intentionally failed to provide timely and accurate wage
7 statements in violation of Labor Code § 226;
- 8 7. A declaratory judgment that as to Plaintiffs and the former employee members of the
9 putative class, Defendants have willfully failed to pay compensation at the conclusion
10 of employment in violation of Labor Code §§ 201, 202 and 203;
- 11 8. A declaratory judgment that Gen Cerritos has violated the UCL by failing to provide
12 Bussers, Server Assistants, and Servers with required off-duty meal periods and rest
13 periods, knowingly and intentionally failing to provide Bussers, Server Assistants, and
14 Servers with an accurate itemized wage statement showing total hours worked and total
15 wages earned, failing to timely pay Bussers, Server Assistants, and Servers wages due
16 at the conclusion of employment with Gen Cerritos and failing to timely pay Bussers,
17 Server Assistants, and Servers their accrued compensation on a bi-monthly basis, as
18 required by California law;
- 19 9. A declaratory judgment that Gen Cerritos is liable to Plaintiffs and the members of the
20 putative class under PAGA for the violations of the Labor Code set forth above;
- 21 10. An award to Plaintiffs and the members of the putative class of one (1) hour of
22 additional pay at the regular rate of compensation for each workday that meal periods
23 were not permitted or authorized pursuant to Labor Code §§ 226.7 and 512 and IWC
24 Wage Order No. 5-2001;
- 25 11. An award to Plaintiffs and the members of the putative class of one (1) hour of
26 additional pay at the regular rate of compensation for each workday that rest periods
27 were not permitted or authorized pursuant to Labor Code § 226.7 and Wage Order No.
28 5-2001;

1 12. An award of damages to Plaintiffs and the members of the putative class for Gen
2 Cerritos' failure to provide timely and accurate wage statements pursuant to Labor
3 Code § 226;

4 13. An award of payments due to Plaintiffs and the members of the putative class who
5 have left Gen Cerritos's employ, as waiting time penalties, pursuant to Labor Code §
6 203;

7 14. An order requiring Gen Cerritos to pay restitution of all amounts owed to Plaintiffs and
8 the members of the putative class for failing to provide Bussers, Server Assistants, and
9 Servers with required off-duty meal periods and rest periods, knowingly and
10 intentionally failing to provide Bussers, Server Assistants, and Servers with an accurate
11 itemized wage statement showing total hours worked and total wages earned, failing to
12 timely pay Bussers, Server Assistants, and Servers' wages due at the conclusion of
13 employment with Gen Cerritos and failing to timely pay Bussers, Server Assistants,
14 and Servers their accrued compensation on a bi-monthly basis, in an amount according
15 to proof, pursuant to Business & Professions Code § 17203;

16 15. An award of civil penalties and attorneys' fees and costs pursuant to Labor Code §
17 2698, *et seq.* (PAGA).

18 16. An order permanently enjoining Gen Cerritos from engaging in the practices
19 challenged herein;

20 17. Interest accrued to date;

21 18. An award to Plaintiffs and the members of the putative class of reasonable attorneys'
22 fees and costs, pursuant to Code of Civil Procedure 1021.5, Labor Code §§ 226, 226.7,
23 2699(g) and/or other applicable law; and,

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19. An award of such other and further relief as this Court may deem appropriate.

DATED: February 17, 2021

Genie Harrison Law Firm, APC

By: 

**Genie Harrison, Esq.
Jennifer Ostertag, Esq.
Andrea Fields, Esq.
Attorneys for Plaintiffs
Andrew Shin and Hector Rodriguez**

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DEMAND FOR JURY TRIAL

Plaintiffs Andrew Shin and Hector Rodriguez, on behalf of themselves and all other persons similarly situated, and on behalf of the general public hereby demand trial by jury to the extent authorized by law.

DATED: February 17, 2021

Genie Harrison Law Firm, APC

By: 

**Genie Harrison, Esq.
Jennifer Ostertag, Esq.
Andrea Fields, Esq.
Attorneys for Plaintiffs
Andrew Shin and Hector Rodriguez**